

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL CASE NO. 1:11cv52**

**SHEILA D. BURNETTE,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **AUSTIN MEDICAL, INC. and** )  
 **THOMAS M. HUTTO, JR.,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court on the Defendants' Motion to Dismiss Complaint Pursuant to Rules 12(b)(1) and (6) [Doc. 3] and the Magistrate Judge's Memorandum and Recommendation [Doc. 13] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the motion to dismiss and to submit a recommendation for its disposition.

On April 14, 2011, the Magistrate Judge filed a Memorandum and Recommendation containing proposed conclusions of law in support of a

recommendation regarding the motion to dismiss. [Doc. 13]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.

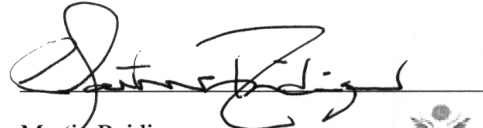
After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby **ACCEPTS** the Magistrate Judge's Recommendation that the motion to dismiss be granted in part and denied in part.

**IT IS, THEREFORE, ORDERED** that the Defendants' Motion to Dismiss Complaint Pursuant to Rules 12(b)(1) and (6) [Doc. 3] is **GRANTED** with respect to the Title VII and wrongful discharge claims against Defendant Thomas M. Hutto, Jr. and the Section 1981 claims against both Defendants; the Motion [Doc. 3] is **DENIED** with respect to the Title VII and wrongful discharge claims against Defendant Austin Medical, Inc.

**IT IS FURTHER ORDERED** that the parties shall conduct an initial attorneys' conference within fourteen (14) days from the entry of this Order and shall file a certificate of initial attorneys' conference with the Court within seven (7) days thereafter.

**IT IS SO ORDERED.**

Signed: May 9, 2011



Martin Reidinger  
United States District Judge

